

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 949
Finance

(The President, *et al.*) (By Request - Administration)

Workers' Compensation - Medical Presumptions

This Administration bill (1) expands occupational disease presumptions under workers' compensation law for firefighters and related personnel; (2) increases the minimum service requirement for a covered employee to qualify for specified occupational disease presumptions; (3) limits the applicability of occupational disease presumptions to within a specified number of years after a covered employee separates from service; and (4) limits a jurisdiction's total benefit payout for specified workers' compensation benefits.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: State expenditures (all funds) increase minimally due to the bill's expansion of occupational disease presumptions. This increase is offset, in part, by a minimal decrease in expenditures due to limits on applicability established by the bill.

Injured Workers' Insurance Fund (IWIF) Effect: IWIF expenditures increase minimally due to the bill's expansion of occupational disease presumptions. This increase is offset, in part, by a minimal decrease in expenditures due to limits on applicability established by the bill.

Local Effect: Local government expenditures increase significantly due to the bill's expansion of occupational disease presumptions. This increase is offset, in part, by a minimal decrease in expenditures due to limits on applicability established by the bill. The fiscal effect of the bill's limit on a jurisdiction's total benefit payout cannot be reliably determined at this time, as discussed below.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law: Workers' compensation law establishes a presumption of compensable occupational disease for certain public employees who are exposed to unusual hazards in the course of their employment. For example, an individual who has heart disease, hypertension, or lung disease resulting in disability or death is presumed to have a compensable occupational disease if the individual is a paid firefighter or fire fighting instructor; a sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State; or a volunteer firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member. (For a volunteer to qualify for the presumption, the individual must have met a suitable standard of physical examination before becoming a volunteer.) The bill specifies that this presumption applies only for 15 years after the date that the individual separated from paid or volunteer fire service.

Under current law, any one of the individuals specified above may also be presumed to have a compensable occupational disease if the individual (1) has leukemia or pancreatic, prostate, rectal, or throat cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty; (2) has completed at least five years of service as a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member (or in a combination of those jobs) in the department where the individual currently serves; (3) is unable to perform the normal duties of a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member in the department where the individual currently serves; and (4) in the case of a volunteer, has met a suitable standard of physical examination before becoming a volunteer.

The bill adds, to the list of compensable occupational diseases under this presumption, the following cancers: esophageal, brain, testicular, bladder, breast, urethral, or digestive cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty. The bill also increases the minimum service requirement from 5 to 10 years. In addition, the bill specifies that this presumption applies only for 20 years after the date that the individual separated from paid or volunteer fire service. The bill further specifies that, on an annual basis, a jurisdiction's total benefit payout under this presumption for disability and dependency benefits may not exceed 110% of the jurisdiction's highest annual payout for such benefits.

Although statute is silent on the issue, occupational disease presumptions have long been considered rebuttable presumptions. Two court decisions address the use of “is presumed” in reference to occupational diseases in current law, specifying that the term “without contrary qualification, should be read to be a presumption, although rebuttable, of fact.” (See *Board of County Commissioners v. Colgan*, 274 Md. 193, 334 A.2d 89 (1975); and *Montgomery County Fire Board v. Fisher*, 53 Md. App. 435, 454 A.2d 394, aff’d, 298 Md. 245, 468 A.2d 625 (1983).)

However, the Court of Special Appeals has stated that, “after the last injurious exposure to a hazard and the conclusion of employment the nexus between an occupational disease and an occupation becomes increasingly remote.” (See *Montgomery County, Maryland v. Pirrone*, 109 Md. App. 201, 674 A.2d 98 (1996).)

Background: A 2007 study conducted by the University of Cincinnati analyzed information on 110,000 firefighters from around the nation and found that firefighters are at a greater risk of developing several types of cancer than the general population. According to the study, firefighters are exposed to many compounds that the International Agency for Research on Cancer has designated as carcinogens; these include benzene, diesel engine exhaust, chloroform, soot, styrene, and formaldehyde. The substances can be inhaled or absorbed through the skin and occur both at the scene of a fire and in the firehouse. The study found that firefighters are at increased risk of developing various types of cancers.

A 2005 study conducted by The Johns Hopkins University (JHU) was inconclusive with regard to whether certain chemical exposures were linked to brain cancer among Anne Arundel County firefighters. However, a literature review conducted by JHU for the study led the researchers to conclude that the risk for several types of cancer (including bladder, brain, lymphatic, kidney, pancreatic, prostate, skin, rectal, and testicular cancers) is significantly higher for firefighters than for the general population.

Several other studies, intended to characterize the cancer risk associated with exposures related to firefighting operations, are ongoing.

State/IWIF Fiscal Effect: Expenditures increase beginning in fiscal 2013 due to the bill’s expansion of the State’s occupational disease presumptions. IWIF advises that cases involving occupational disease presumptions are difficult to contest as the presumptions are nearly impossible to overcome. IWIF further advises that, over the past 10 years, it has received 653 presumption cases resulting in approximately \$6.8 million in paid claims.

Although some State employees of the Office of the Fire Marshal and the Baltimore/Washington International Thurgood Marshall Airport Fire and Rescue Department are eligible for expanded occupational disease presumptions under the bill, most of the eligible employees are employed by local governments, as discussed below. Thus, Legislative Services advises that the number of State employees eligible for expanded presumptions under the bill – and, correspondingly, the amount of any increase in State expenditures due to increased benefits paid – is likely to be minimal.

The bill's provision that increases the minimum service requirement for a covered employee to qualify for specified presumptions may result in a decrease in the number of claims brought – and, accordingly, in State expenditures. However, it is unclear how many claims are filed under existing presumptions for public safety personnel who have served for between 5 and 10 years. Thus, the exact savings under this provision cannot be reliably estimated at this time – although Legislative Services advises that any such savings are unlikely to exceed the additional costs associated with the bill's expansion of the presumptions.

IWIF advises that the bill's provisions that limit the applicability of presumptions to within 15 or 20 years after a covered employee separates from service is likely to increase the number of claims filed, presumed to be related to employment, and paid. According to IWIF, these provisions *require* the presumptions to apply for 15 or 20 years after separation of service. However, Legislative Services advises that the bill specifies, rather, that the presumptions apply for *only* 15 or 20 years after service – therefore establishing a new limit on the presumptions' applicability where none had existed. Thus, Legislative Services disagrees that these provisions (1) overrule case law stating that, after the last injurious exposure to a hazard and the conclusion of employment, the nexus between an occupational disease and an occupation becomes increasingly remote; or (2) necessarily results in greater claims filed and paid. However, Legislative Services notes the possibility that these provisions may signal to the courts that presumptions are intended to apply for claims filed toward the upper end of the 15- or 20-year limit. Because it is unclear both how courts will interpret these provisions and how many cases are affected, Legislative Services advises that the fiscal impact of these provisions cannot be reliably determined at this time.

Local Fiscal Effect: Local governments in the State are likely to be affected disproportionately by the bill because counties and municipalities, most of which are self-insured, employ the majority of the emergency personnel affected by the bill. Montgomery County, for example, anticipates additional costs under the bill of over \$1.0 million annually due to the bill's expansion of occupational disease presumptions. Legislative Services advises that, although the amount of any such increase in

expenditures cannot be reliably estimated at this time, it is likely (given the high per-claim cost for these types of cases) to be significant. The bill's other provisions, related to service requirements and limits on applicability, affect local governments in a similar manner to the State and IWIF.

The limit established by the bill on a jurisdiction's total benefit payout has an indeterminate fiscal effect on local governments. It is unclear from the bill how the limit would be enforced and how claims filed after a jurisdiction had reached its limit would be resolved.

Additional Information

Prior Introductions: SB 646 and HB 1280 of 2010 contained similar provisions but were targeted more narrowly. HB 1280 passed the House but did not receive a hearing in the Senate. SB 646 was heard in the Senate Finance Committee but received no further action.

Cross File: HB 1101 (The Speaker, *et al.*) (By Request - Administration) - Economic Matters.

Information Source(s): The Johns Hopkins University; University of Cincinnati; Charles, Frederick, and Montgomery counties; Injured Workers' Insurance Fund; Department of State Police; National Council on Compensation Insurance; Subsequent Injury Fund; Maryland Department of Transportation; Uninsured Employers' Fund; Workers' Compensation Commission; Department of Legislative Services

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ncs/ljm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Workers' Compensation - Medical Presumptions

BILL NUMBER: SB 949/ HB 1101

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS